

**U.S. District Court
Southern District of Iowa (Western)
CIVIL DOCKET FOR CASE #: 1:22-cv-00020-SMR-SBJ**

Couser et al v. Shelby County, Iowa et al
Assigned to: Chief Judge Stephanie M. Rose
Referred to: Magistrate Judge Stephen B. Jackson, Jr
Case in other court: 8th CCA, 23-02818
 8th CCA, 23-03758
 IASD, 4-22-cv-383
 IASD, 4-23-cv-13, 272
Cause: 49:60101 Pipeline Safety Act of 1994

Plaintiff**William Couser**

Date Filed: 11/15/2022
Date Terminated: 12/18/2023
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

represented by **Bret Alan Dublinske**
FREDRIKSON & BYRON, P.A. (DSM)
111 E. GRAND AVENUE
SUITE 301
DES MOINES, IA 50309
515-242-8904
Email: bdublinske@fredlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Brant Michael Leonard
FREDRIKSON & BYRON, P.A. (DSM)
111 E. GRAND AVENUE
SUITE 301
DES MOINES, IA 50309
515-242-8903
Fax: 515-242-8950
Email: bleonard@fredlaw.com
ATTORNEY TO BE NOTICED
Designation: Retained

Brian David Boone
ALSTON & BIRD LLP
VANTAGE SOUTH END
1120 SOUTH TRYON STREET
SUITE 300
CHARLOTTE, NC 28280-4000
704-444-1106
Fax: 704-444-1111
Email: brian.boone@alston.com
PRO HAC VICE
ATTORNEY TO BE NOTICED
Designation: Retained

Karla M. Doe
ALSTON & BIRD LLP (GA)
1201 WEST PEACHTREE STREET NW
SUITE 4000
ATLANTA, GA 30309-3424
678-545-9364
Email: karla.doe@alston.com
PRO HAC VICE
ATTORNEY TO BE NOTICED
Designation: Retained

Kristy Dahl Rogers

FREDRIKSON & BYRON, P.A. (DSM)
111 E. GRAND AVENUE
SUITE 301
DES MOINES, IA 50309
515-242-8900
Fax: 515-242-8950
Email: krogers@fredlaw.com
ATTORNEY TO BE NOTICED
Designation: Retained

Michael Roger Hoernlein
ALSTON & BIRD LLP
VANTAGE SOUTH END
1120 SOUTH TRYON STREET
SUITE 300
CHARLOTTE, NC 28280-4000
704-444-1041
Fax: 704-444-1111
Email: michael.hoernlein@alston.com
PRO HAC VICE
ATTORNEY TO BE NOTICED
Designation: Retained

Nicole Coulter-Ledbetter
FREDRIKSON & BYRON, P.A. (DSM)
111 E. GRAND AVENUE
SUITE 301
DES MOINES, IA 50309
515-242-8981
Email: nledbetter@fredlaw.com
ATTORNEY TO BE NOTICED
Designation: Retained

Plaintiff

Summit Carbon Solutions, LLC

represented by **Bret Alan Dublinske**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Brant Michael Leonard
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

Brian David Boone
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Designation: Retained

Karla M. Doe
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Designation: Retained

Kristy Dahl Rogers
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

Michael Roger Hoernlein
(See above for address)

PRO HAC VICE
ATTORNEY TO BE NOTICED
Designation: Retained

Nicole Coulter-Ledbetter
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

V.

Defendant

Shelby County, Iowa

represented by **Jason Michael Craig**
 AHLERS & COONEY PC
 100 COURT AVE
 STE 600
 DES MOINES, IA 50309
 515-246-0372
 Fax: 515-243-2149
 Email: jcraig@ahlerslaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Emily A. Kolbe
 AHLERS & COONEY
 100 COURT AVENUE
 SUITE 600
 DES MOINES, IA 50309
 515-243-0356
 Fax: 2432149
 Email: ekolbe@ahlerslaw.com
ATTORNEY TO BE NOTICED
Designation: Retained

Defendant

Shelby County Board of Supervisors

represented by **Jason Michael Craig**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Emily A. Kolbe
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

Defendant

Steve Kenkel
in his official capacity as a Shelby County Supervisor

represented by **Jason Michael Craig**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Emily A. Kolbe
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

Defendant

Charles Parkhurst
in his official capacity as a Shelby County

represented by **Jason Michael Craig**
(See above for address)

Supervisor

LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Emily A. Kolbe
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

Defendant

Darin Haake
*in his official capacity as a Shelby County
Supervisor*

represented by **Jason Michael Craig**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Emily A. Kolbe
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

Counter Claimant

Shelby County, Iowa

represented by **Jason Michael Craig**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Emily A. Kolbe
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

V.

Counter Defendant

Summit Carbon Solutions, LLC

represented by **Bret Alan Dublinske**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Brant Michael Leonard
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

Brian David Boone
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

Karla M. Doe
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

Kristy Dahl Rogers
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

Michael Roger Hoernlein
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

Nicole Coulter-Ledbetter
(See above for address)
ATTORNEY TO BE NOTICED
Designation: Retained

Date Filed	#	Docket Text
11/15/2022	<u>1</u>	COMPLAINT against All Defendants Filing fee paid in the amount of \$ 402, receipt number AIASDC-4980441., filed by William Couser, Summit Carbon Solutions, LLC. Notice of Dismissal for lack of Service deadline set for 2/13/2023. Rule 16 Notice of Dismissal set for 2/13/2023. (Attachments: # <u>1</u> Exhibit A)(Dublinske, Bret) (Entered: 11/15/2022)
11/15/2022		Magistrate Judge Stephen B. Jackson, Jr added. Chief Magistrate Judge Helen C. Adams no longer assigned to case. Related case 4-22-cv-383. (kjw) (Entered: 11/15/2022)
11/16/2022	<u>2</u>	Summons/Corporate Disclosure Packet Note: Counsel should download the attached summons and/or corporate disclosure packet, if applicable. In compliance with Rule 4 of the Rules of Civil Procedure for summons and Local Rule 7.1 for the disclosure statements. (vr) (Entered: 11/16/2022)
11/17/2022	<u>3</u>	Corporate Disclosure Packet Note: Counsel should download the attached corporate disclosure packet in compliance with Local Rule 7.1 for the disclosure statements. Corporate Disclosure Statement deadline set for plaintiff 12/8/2022. (btg) (Entered: 11/17/2022)
11/22/2022	<u>4</u>	Corporate Disclosure/Statement of Interest by Summit Carbon Solutions, LLC. (Dublinske, Bret) (Entered: 11/22/2022)
11/28/2022	<u>5</u>	MOTION for Leave to Appear Pro Hac Vice by William Couser, Summit Carbon Solutions, LLC. (Dublinske, Bret) (Entered: 11/28/2022)
11/28/2022	<u>6</u>	MOTION for Leave to Appear Pro Hac Vice by William Couser, Summit Carbon Solutions, LLC. (Dublinske, Bret) (Entered: 11/28/2022)
11/28/2022	<u>7</u>	MOTION for Leave to Appear Pro Hac Vice by William Couser, Summit Carbon Solutions, LLC. (Dublinske, Bret) (Entered: 11/28/2022)
11/30/2022	<u>8</u>	TEXT ORDER granting <u>5</u> Motion for Leave to Appear Pro Hac Vice Karla M. Doe; granting <u>6</u> Motion for Leave to Appear Pro Hac Vice Michael Roger Hoernlein; granting <u>7</u> Motion for Leave to Appear Pro Hac Vice Brian David Boone. Signed by Magistrate Judge Stephen B. Jackson, Jr on 11/30/2022. (btg) (Entered: 11/30/2022)
12/05/2022	<u>9</u>	SUMMONS Returned Executed by William Couser, Summit Carbon Solutions, LLC. Charles Parkhurst served on 11/23/2022, answer due 12/14/2022. (Dublinske, Bret) (Entered: 12/05/2022)
12/05/2022	<u>10</u>	SUMMONS Returned Executed by William Couser, Summit Carbon Solutions, LLC. Darin Haake served on 11/23/2022, answer due 12/14/2022. (Dublinske, Bret) (Entered: 12/05/2022)
12/05/2022	<u>11</u>	SUMMONS Returned Executed by William Couser, Summit Carbon Solutions, LLC. Shelby County Board of Supervisors served on 11/23/2022, answer due 12/14/2022. (Dublinske, Bret) (Entered: 12/05/2022)
12/05/2022	<u>12</u>	SUMMONS Returned Executed by William Couser, Summit Carbon Solutions, LLC. Shelby County, Iowa served on 11/23/2022, answer due 12/14/2022. (Dublinske, Bret) (Entered: 12/05/2022)
12/05/2022	<u>13</u>	SUMMONS Returned Executed by William Couser, Summit Carbon Solutions, LLC. Steve Kenkel served on 11/23/2022, answer due 12/14/2022. (Dublinske, Bret) (Entered: 12/05/2022)

12/08/2022	<u>14</u>	Unresisted MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa.Motions referred to Stephen B. Jackson, Jr. (Craig, Jason) (Entered: 12/08/2022)
12/08/2022	<u>15</u>	TEXT ORDER granting <u>14</u> Defendants' Unresisted Motion for Extension of Answer Deadline. Defendants have until December 21, 2022 to file an answer or other responsive pleading to the complaint. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 12/8/2022. (jeb) (Entered: 12/08/2022)
12/21/2022	<u>16</u>	ANSWER to Complaint by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa.(Craig, Jason) (Entered: 12/21/2022)
01/18/2023	<u>17</u>	TEXT ORDER SETTING SCHEDULING CONFERENCE: A Telephonic Scheduling Conference will be held January 30, 2023 at 11:00 a.m. before Magistrate Judge Stephen B. Jackson, Jr. The parties shall confer and file a proposed scheduling order and discovery plan as provided under L.R. 16 by January 25, 2023. To join the conference, counsel shall call 866-590-5055 and utilize access code 8811585. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 1/18/2023. (jeb) (Entered: 01/18/2023)
01/26/2023	<u>18</u>	TEXT ORDER: The parties have not filed a proposed scheduling order and discovery plan as previously ordered. They must do so by 9:00 a.m. January 27, 2023. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 1/26/2023. (jeb) (Entered: 01/26/2023)
01/26/2023	<u>19</u>	PROPOSED SCHEDULING ORDER AND DISCOVERY PLAN . (Dublinske, Bret) (Entered: 01/26/2023)
01/30/2023	<u>20</u>	TEXT MINUTE ENTRY for proceedings held before Magistrate Judge Stephen B. Jackson, Jr.: Telephonic Scheduling Conference held on 1/30/2023. Attorney Bret Dublinske joined for plaintiffs. Attorney Jason Craig joined for defendants. Scheduling order to be entered. Court Time: 8 minutes. (jeb) (Entered: 01/30/2023)
01/30/2023	<u>21</u>	SCHEDULING AND TRIAL SETTING ORDER. Initial Disclosures due by 2/21/2023. Motions to Add Parties due by 3/21/2023. Motions to Amend Pleadings due by 3/21/2023. Plaintiffs Expert Witness Disclosures due by 2/21/2023. Defendants Expert Witness Disclosures due by 4/20/2023. Plaintiffs Rebuttal Expert Witness Disclosures due by 5/19/2023. Discovery Deadline 6/20/2023. Dispositive Motion Deadline 7/21/2023. Final Pretrial Conference set for 12/13/2023 10:00 a.m. in Council Bluffs Courthouse before Magistrate Judge Stephen B. Jackson, Jr. Bench Trial set for 9:00 a.m. 1/16/2024 & 1/17/2024 in Council Bluffs Courthouse before Chief Judge Stephanie M. Rose. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 1/30/2023. (jeb) (Entered: 01/30/2023)
01/30/2023	<u>22</u>	ORDER REGARDING FINAL PRETRIAL CONFERENCE REQUIREMENTS. See order for deadlines. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 1/30/2023. (Attachments: # <u>1</u> Final Pretrial Order Form) (jeb) (Entered: 01/30/2023)
02/06/2023	<u>23</u>	MOTION for Preliminary Injunction <i>MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION</i> by William Couser, Summit Carbon Solutions, LLC. Responses due by 2/21/2023. (Dublinske, Bret) (Entered: 02/06/2023)
02/06/2023	<u>24</u>	MOTION for Preliminary Injunction <i>UNRESISTED MOTION FOR OVERLENGTH BRIEF IN SUPPORT OF THE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION</i> by William Couser, Summit Carbon Solutions, LLC. Responses due by 2/21/2023. (Attachments: # <u>1</u> Brief in Support PLAINTIFFS BRIEF SUPPORTING THEIR MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION, # <u>2</u> Exhibit Exhibit 1, # <u>3</u> Exhibit Exhibit 2, # <u>4</u> Exhibit Exhibit 3)(Dublinske, Bret) (Entered: 02/06/2023)
02/06/2023	<u>25</u>	TEXT ORDER granting <u>24</u> Plaintiffs' Unresisted Motion for Overlength Brief in Support of the Motion for Temporary Restraining Order and Preliminary Injunction. Pursuant to Local Rule 7(h), the Clerk of Court is directed to detach and docket the brief and supporting exhibits attached to the motion. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 2/6/2023. (jeb) (Entered: 02/06/2023)
02/07/2023	<u>26</u>	PLAINTIFFS BRIEF SUPPORTING THEIR MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION by William Couser,

		Summit Carbon Solutions, LLC re <u>23</u> MOTION for Preliminary Injunction <i>MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION</i> . (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3) (vr) (Entered: 02/07/2023)
02/07/2023	<u>27</u>	TEXT ORDER: Defendants are directed to file a response to the Motion for Preliminary Injunction and Temporary Restraining Order, <u>23</u> , by the close of business on Thursday, February 9, 2023. Signed by Chief Judge Stephanie M. Rose on 2/7/2023. (rnm) (Entered: 02/07/2023)
02/08/2023	<u>28</u>	Unresisted MOTION for Extension of Time to File <i>Response to Plaintiffs' Motion for Preliminary Injunction and Stipulation re: Temporary Restraining Order</i> by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa.Motions referred to Stephen B. Jackson, Jr. Responses due by 2/22/2023. (Craig, Jason) (Entered: 02/08/2023)
02/09/2023	<u>29</u>	For the reasons stated in the order, the Motion for an Extension of Time is GRANTED. See Order for Details. Signed by Chief Judge Stephanie M. Rose on 2/9/2023. (rnm) (Entered: 02/09/2023)
02/21/2023	<u>30</u>	RESPONSE to Motion re <u>23</u> MOTION for Preliminary Injunction <i>MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION</i> filed by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa. Replies due by 2/28/2023. (Attachments: # <u>1</u> Appendix of Exhibits)(Craig, Jason) (Entered: 02/21/2023)
02/21/2023	<u>31</u>	Unresisted MOTION to file overlength brief <i>in Support of Resistance to Motion for Preliminary Injunction</i> by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa.Motions referred to Stephen B. Jackson, Jr. Responses due by 3/7/2023. (Attachments: # <u>1</u> Proposed Overlength Brief in Support of Resistance to Motion for Preliminary Injunction)(Craig, Jason) (Entered: 02/21/2023)
02/22/2023	<u>32</u>	TEXT ORDER granting <u>31</u> Defendants' Unresisted Motion for Leave to File Overlength Brief. Pursuant to Local Rule 7(h), the Clerk of Court is directed to detach and docket the brief attached to the motion. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 2/22/2023. (jeb) (Entered: 02/22/2023)
02/23/2023	<u>33</u>	BRIEF in Support of its Resistance to Plaintiffs' Motion by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa re <u>23</u> MOTION for Preliminary Injunction <i>MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION</i> . (vr) (Entered: 02/23/2023)
02/23/2023	<u>34</u>	Unresisted MOTION for Extension of Time to File A <i>REPLY IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION</i> by William Couser, Summit Carbon Solutions, LLC.Motions referred to Stephen B. Jackson, Jr. Responses due by 3/9/2023. (Rogers, Kristy) (Entered: 02/23/2023)
02/23/2023	<u>35</u>	TEXT ORDER granting <u>34</u> Plaintiffs' Unresisted Motion for Extension of Time to File a Reply in Support of Their Motion for Preliminary Injunction. Plaintiffs have until March 7, 2023 to file their reply. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 2/23/2023. (jeb) (Entered: 02/23/2023)
03/01/2023	<u>36</u>	TEXT ORDER Setting Hearing on Motion <u>23</u> MOTION for Preliminary Injunction. Motion Hearing is set for 3/17/2023 at 09:30 AM in Des Moines – Room 145 – 1st Floor South before Chief Judge Stephanie M. Rose. Signed by Chief Judge Stephanie M. Rose on 3/1/2023. (mkh) (Entered: 03/01/2023)
03/02/2023	<u>37</u>	Sealed Document – Email correspondence with the parties concerning the Court's 36 order on motion for preliminary injunction. (mkh) (Entered: 03/02/2023)
03/02/2023	<u>38</u>	TEXT ORDER Setting Hearing on Motion <u>23</u> MOTION for Preliminary Injunction. Following discussion with counsel, Motion Hearing is RE-set for 3/31/2023 at 09:30 AM in Des Moines – Room 145 – 1st Floor South before Chief Judge Stephanie M. Rose. Signed by Chief Judge Stephanie M. Rose on 3/2/2023. (mkh) (Entered: 03/02/2023)

03/07/2023	<u>39</u>	Unresisted MOTION to file overlength brief <i>re Reply Brief Supporting Plaintiffs' Motion for Preliminary Injunction</i> by William Couser, Summit Carbon Solutions, LLC.Motions referred to Stephen B. Jackson, Jr. Responses due by 3/21/2023. (Attachments: # <u>1</u> Exhibit Plaintiffs' Reply Brief Supporting Their Motion for Preliminary Injunction)(Hoernlein, Michael) (Entered: 03/07/2023)
03/08/2023	<u>40</u>	TEXT ORDER granting <u>39</u> Plaintiffs' Unresisted Motion for Overlength Reply Brief. Pursuant to Local Rule 7(h), the Clerk of Court is directed to detach and docket the reply brief attached to the motion. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 3/8/2023. (jeb) (Entered: 03/08/2023)
03/09/2023	<u>41</u>	REPLY Brief in Support of <u>23</u> MOTION for Preliminary Injunction filed by William Couser, Summit Carbon Solutions, LLC. (kmc) (Entered: 03/09/2023)
03/21/2023	<u>42</u>	Unresisted MOTION for Leave to File <i>Counterclaim against Summit Carbon Solutions, LLC</i> by Shelby County, Iowa.Motions referred to Stephen B. Jackson, Jr. Responses due by 4/4/2023. (Attachments: # <u>1</u> Proposed Counterclaim, # <u>2</u> Brief in Support)(Craig, Jason) (Entered: 03/21/2023)
03/22/2023	<u>43</u>	TEXT ORDER granting <u>42</u> Defendant Shelby County, Iowa's Unresisted Motion for Leave to File Counterclaim. The Clerk of Court is directed to detach and docket the counterclaim pleading attached to the motion. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 3/22/2023. (jeb) (Entered: 03/22/2023)
03/26/2023	<u>44</u>	COUNTERCLAIM against Summit Carbon Solutions, LLC, filed by Shelby County, Iowa. (kmc) (Entered: 03/26/2023)
03/30/2023	<u>45</u>	Sealed Document – Email correspondence with the Court on March 30, 2023. (mkh) (Entered: 03/30/2023)
03/31/2023	<u>46</u>	Minute Entry for proceedings held before Chief Judge Stephanie M. Rose: Motion Hearing held on 3/31/2023 re <u>23</u> MOTION for Preliminary Injunction filed by Summit Carbon Solutions, LLC, William Couser. (Court Reporter Kelli Mulcahy.) (Time in Court: 1 hr. 7 min.) (kjs) (Entered: 03/31/2023)
04/03/2023	<u>47</u>	SUPPLEMENT/ADDENDUM to <u>46</u> by William Couser, Summit Carbon Solutions, LLC. (Attachments: # <u>1</u> Exhibit Application – Petition, # <u>2</u> Exhibit Exhibit F)(Dublinske, Bret) Modified on 4/6/2023 to Link to Motion (kmc). (Entered: 04/03/2023)
04/10/2023	<u>48</u>	BRIEF Supplemental Brief in Resistance to Plaintiffs' Motion for Preliminary Injunction by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa re <u>47</u> SUPPLEMENT/ADDENDUM . (Craig, Jason) Modified on 4/11/2023 to Link to Motion <u>23</u> (kmc). (Entered: 04/10/2023)
04/11/2023	<u>49</u>	ANSWER to <u>44</u> Counterclaim by Summit Carbon Solutions, LLC.(Hoernlein, Michael) (Entered: 04/11/2023)
05/06/2023	<u>50</u>	TRANSCRIPT of Proceedings re <u>46</u> Motion Hearing, held on March 31, 2023 before Judge Stephanie M. Rose. Court Reporter: Kelli Mulcahy, Telephone Number: (515)284–6219. Page No(s).: 1 – 48. Transcript may be viewed at court public terminal or purchased through Court Reporter before deadline for Release of Transcript Restriction. After that date it may be obtained through court reporter, Clerk's Office, or PACER. Redaction Request due 6/2/2023. Redacted Transcript Deadline set for 6/9/2023. Release of Transcript Restriction set for 8/7/2023. (kmm) (Entered: 05/06/2023)
07/10/2023	<u>51</u>	ORDER: For the reasons stated in the Order, the Motion for Preliminary Injunction is GRANTED. See Order for details. Signed by Chief Judge Stephanie M. Rose on 7/10/2023. (rnm) (Entered: 07/10/2023)
07/19/2023	<u>52</u>	NOTICE of Appearance by Emily Kolbe on behalf of All Defendants (Kolbe, Emily) (Entered: 07/19/2023)
07/20/2023	<u>53</u>	Unresisted MOTION for Extension of Time For Scheduling Order/R16 Deadlines of Dispositive Motion by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa.Motions referred to Stephen B. Jackson, Jr. Responses due by 8/3/2023. (Craig, Jason) (Entered: 07/20/2023)

07/20/2023	<u>54</u>	TEXT ORDER granting <u>53</u> Defendants' Unresisted Motion to Extend Dispositive Motions Deadline. The deadline to file dispositive motions is extended to August 4, 2023. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 7/20/2023. (jeb) (Entered: 07/20/2023)
07/20/2023	<u>55</u>	AFFIDAVIT of Steve Kenkel re <u>51</u> Order on Motion for Preliminary Injunction by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa. (Craig, Jason) (Entered: 07/20/2023)
07/21/2023	<u>56</u>	MOTION to Certify Question(s) of Law <i>and to Stay Proceedings Pending Same – Expedited Relief Requested</i> by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa. Responses due by 8/4/2023. (Attachments: # <u>1</u> Brief in Support, # <u>2</u> Exhibit A)(Craig, Jason) (Entered: 07/21/2023)
07/27/2023	<u>57</u>	ORDER: For the reasons stated in the Order, the Motion to Certify is DENIED. Signed by Chief Judge Stephanie M. Rose on 7/27/2023. (rnm) (Entered: 07/27/2023)
08/04/2023	<u>58</u>	MOTION for Summary Judgment by Summit Carbon Solutions, LLC. Responses due by 8/25/2023. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Undisputed Facts, # <u>3</u> Appendix)(Dublinske, Bret) (Entered: 08/04/2023)
08/04/2023	<u>59</u>	MOTION for Summary Judgment by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa. Responses due by 8/25/2023. (Attachments: # <u>1</u> Statement of Undisputed Facts, # <u>2</u> Appendix)(Craig, Jason) (Entered: 08/04/2023)
08/04/2023	<u>60</u>	Unresisted MOTION to file overlength brief <i>in support of Motion for Summary Judgment</i> by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa. Motions referred to Stephen B. Jackson, Jr. Responses due by 8/18/2023. (Attachments: # <u>1</u> Brief in Support of Motion for Summary Judgment)(Craig, Jason) (Entered: 08/04/2023)
08/07/2023	<u>61</u>	TEXT ORDER granting <u>60</u> Defendants' Unresisted Motion for Leave to File Overlength Brief. Pursuant to Local Rule 7(h), the Clerk of Court is directed to detach and docket the brief attached to the motion. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 8/7/2023. (jeb) (Entered: 08/07/2023)
08/08/2023	<u>62</u>	BRIEF by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa re <u>59</u> MOTION for Summary Judgment . (btg) (Entered: 08/08/2023)
08/08/2023	<u>63</u>	NOTICE OF APPEAL as to <u>51</u> Order on Motion for Preliminary Injunction by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa. Fee paid in the amount of \$505 receipt number AIASDC-5213476. (Craig, Jason) (Entered: 08/08/2023)
08/09/2023	<u>64</u>	NOTIFICATION OF APPEAL and NOA Supplement by District Court Clerk to USCA re <u>63</u> Notice of Appeal, filed on 8/8/2023. (vr) (Entered: 08/09/2023)
08/10/2023	<u>65</u>	USCA Case Number 23-2818 for <u>63</u> Notice of Appeal, filed by Charles Parkhurst, Darin Haake, Steve Kenkel, Shelby County, Iowa, Shelby County Board of Supervisors. (vr) (Entered: 08/10/2023)
08/14/2023	<u>66</u>	USCA Scheduling Order as to <u>63</u> Notice of Appeal, filed by Charles Parkhurst, Darin Haake, Steve Kenkel, Shelby County, Iowa, Shelby County Board of Supervisors. (vr) (Entered: 08/14/2023)
08/22/2023	<u>67</u>	Documents Sent re <u>63</u> Notice of Appeal, : Motion Hearing <u>50</u> – 1 copy. (vr) (Entered: 08/22/2023)
08/25/2023	<u>68</u>	RESPONSE to Motion re <u>58</u> MOTION for Summary Judgment filed by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa. Replies due by 9/1/2023. (Attachments: # <u>1</u> Response to Plaintiff's Statement of Undisputed Material Facts, # <u>2</u> Statement of Additional Facts)(Craig, Jason) (Entered: 08/25/2023)
08/25/2023	<u>69</u>	Unresisted MOTION to file overlength brief by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa. Motions referred to Stephen B. Jackson, Jr. Responses due by 9/8/2023. (Attachments: # <u>1</u> Brief

		in Support of Resistance to Plaintiff's Motion for Summary Judgment)(Craig, Jason) (Entered: 08/25/2023)
08/25/2023	<u>70</u>	RESPONSE to Motion re <u>59</u> MOTION for Summary Judgment filed by Summit Carbon Solutions, LLC. Replies due by 9/1/2023. (Attachments: # <u>1</u> Response to Defendants' Statement of Undisputed Facts, # <u>2</u> Plaintiff's Appendix)(Dublinske, Bret) (Entered: 08/25/2023)
08/28/2023	<u>71</u>	TEXT ORDER granting <u>69</u> Defendants' Unresisted Motion for Leave to File Overlength Brief. Pursuant to Local Rule 7(h), the Clerk of Court is directed to detach and docket the brief attached to the motion. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 8/28/2023. (jeb) (Entered: 08/28/2023)
08/29/2023	<u>72</u>	BRIEF by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa re <u>68</u> Response to Motion, <u>58</u> MOTION for Summary Judgment . (btg) (Entered: 08/29/2023)
09/01/2023	<u>73</u>	REPLY <i>in Support</i> re <u>58</u> MOTION for Summary Judgment filed by Summit Carbon Solutions, LLC.(Dublinske, Bret) (Entered: 09/01/2023)
09/01/2023	<u>74</u>	Responses to Defendants' Statement of Additional Facts by Summit Carbon Solutions, LLC re <u>68</u> Response to Motion, . (Dublinske, Bret) Modified on 9/3/2023 (bp – Link to pleading <u>58</u>). (Entered: 09/01/2023)
09/01/2023	<u>75</u>	REPLY BRIEF re <u>59</u> MOTION for Summary Judgment filed by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa.(Craig, Jason) (Entered: 09/01/2023)
10/10/2023	<u>76</u>	MOTION for Leave to File <i>Supplement to Motion for Summary Judgment (ECF No. 59) and Resistance to Motion for Summary Judgment (ECF No. 68)</i> by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa.Motions referred to Stephen B. Jackson, Jr. Responses due by 10/24/2023. (Attachments: # <u>1</u> Proposed Supplement, # <u>2</u> Proposed Supplemental Appendix)(Craig, Jason) (Entered: 10/10/2023)
10/11/2023	<u>77</u>	TEXT ORDER granting <u>76</u> Defendants' Motion for Leave to Supplement. Defendants indicate plaintiffs do not consent to the motion. Pursuant to Local Rule 7(e) the court elects to rule on the motion without waiting for a response. The Clerk of Court is directed to detach and docket the supplement and supplemental appendix attached to the motion. Plaintiffs may respond to the supplemental materials and have until October 20, 2023 to do so. Signed by Magistrate Judge Stephen B. Jackson, Jr. on 10/11/2023. (jeb) (Entered: 10/11/2023)
10/12/2023	<u>78</u>	SUPPLEMENT <u>59</u> MOTION for Summary Judgment by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa. (Attachments: # <u>1</u> Appendix) (btg) Modified on 10/25/2023 Linked to Motion <u>58</u> (btg). (Entered: 10/12/2023)
10/20/2023	<u>79</u>	RESPONSE to Motion re <u>59</u> MOTION for Summary Judgment filed by Summit Carbon Solutions, LLC. Replies due by 10/27/2023.(Coulter–Ledbetter, Nicole) (Entered: 10/20/2023)
11/06/2023	<u>80</u>	NOTICE of Appearance by Nicole Coulter–Ledbetter on behalf of Summit Carbon Solutions, LLC (Coulter–Ledbetter, Nicole) (Entered: 11/06/2023)
11/16/2023	<u>81</u>	NOTICE of Appearance by Nicole Coulter–Ledbetter on behalf of All Plaintiffs (Coulter–Ledbetter, Nicole) (Entered: 11/16/2023)
12/04/2023	<u>82</u>	ORDER granting <u>58</u> Motion for Summary Judgment; denying <u>59</u> Motion for Summary Judgment. Signed by Chief Judge Stephanie M. Rose on 12/4/2023.(sl) (Entered: 12/04/2023)
12/12/2023	<u>83</u>	AFFIDAVIT of Steve Kenkel re <u>82</u> Order on Motion for Summary Judgment, by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa. (Craig, Jason) (Entered: 12/12/2023)
12/18/2023	<u>84</u>	JUDGMENT in favor of Summit Carbon Solutions, LLC against Shelby County Board of Supervisors, Shelby County, Iowa, Charles Parkhurst, Darin Haake, Steve Kenkel. Signed by Clerk John S. Courter on 12/18/2023. (btg) Modified on 12/22/2023

		corrected text (kjw). (Entered: 12/18/2023)
12/23/2023	<u>85</u>	NOTICE OF APPEAL as to <u>84</u> Judgment, <u>82</u> Order on Motion for Summary Judgment, by Darin Haake, Steve Kenkel, Charles Parkhurst, Shelby County Board of Supervisors, Shelby County, Iowa. Fee paid in the amount of \$505 receipt number AIASDC-5330663. (Craig, Jason) Modified on 12/29/2023: Additional payment of \$100 made due to CM/ECF event collecting the outdated fee amount instead of the updated amount of \$605, receipt number 26853. (tae) (Entered: 12/23/2023)
12/28/2023	<u>86</u>	NOTIFICATION OF APPEAL and NOA Supplement by District Court Clerk to USCA re <u>85</u> Notice of Appeal, filed on 12/23/2023. (vr) (Entered: 12/28/2023)
01/02/2024	<u>87</u>	USCA Case Number 23-3758 for <u>85</u> Notice of Appeal, filed by Charles Parkhurst, Darin Haake, Steve Kenkel, Shelby County, Iowa, Shelby County Board of Supervisors. (vr) (Entered: 01/02/2024)
01/02/2024	<u>88</u>	USCA Scheduling Order as to <u>85</u> Notice of Appeal, filed by Charles Parkhurst, Darin Haake, Steve Kenkel, Shelby County, Iowa, Shelby County Board of Supervisors. (vr) (Entered: 01/02/2024)
02/02/2024	<u>89</u>	Documents Sent re <u>85</u> Notice of Appeal, : Motion Hearing <u>50</u> – 1 copy. (vr) (Entered: 02/02/2024)
03/12/2024	<u>90</u>	ORDER of USCA as to <u>85</u> Notice of Appeal, filed by Charles Parkhurst, Darin Haake, Steve Kenkel, Shelby County, Iowa, Shelby County Board of Supervisors. (vr) (vr). (Entered: 03/12/2024)
04/10/2024	<u>91</u>	ORDER of USCA as to <u>85</u> Notice of Appeal, filed by Charles Parkhurst, Darin Haake, Steve Kenkel, Shelby County, Iowa, Shelby County Board of Supervisors. (vr) (Entered: 04/10/2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

SUMMIT CARBON SOLUTIONS, LLC,) Case No. 1:22-cv-00020-SMR-SBJ
)
Plaintiff,)
v.) ORDER ON CROSS-MOTIONS FOR
) SUMMARY JUDGMENT
)
SHELBY COUNTY, IOWA, SHELBY)
COUNTY BOARD OF SUPERVISORS,)
STEVE KENKEL, in his official capacity as)
a Shelby County Supervisor, CHARLES)
PARKHURST, in his official capacity as a)
Shelby County Supervisor, and DARIN)
HAAKE, in his official capacity as a Shelby)
County Supervisor,)
)
Defendants.)
)

Last year, the Shelby County Board of Supervisors (“the Board”) promulgated Shelby County Ordinance 2022-4 (“the Ordinance”) in response to planned construction of a hazardous liquid pipeline. Plaintiff Summit Carbon Solutions, LLC (“Summit”) filed this suit to enjoin enforcement of the Ordinance on the grounds that it is preempted by federal and state law. When the Board sought to enforce the Ordinance during the course of this litigation, Plaintiff obtained a preliminary injunction. On August 4, 2023, the parties filed cross-motions for summary judgment. For the reasons discussed in detail below, Plaintiff’s Motion is GRANTED and Defendants’ Motion is DENIED.

I. BACKGROUND¹

On November 15, 2022, Plaintiff filed this suit against Defendants Shelby County, Iowa, the Board, and each Shelby County Supervisor in their official capacities.² The lawsuit alleges that the Ordinance is preempted by the Pipeline Safety Act (“PSA”), a federal law regulating many aspects of pipeline safety, and Iowa Code § 479B, which provides the Iowa Utilities Board (“IUB”) with authority to issue permits approving the construction of pipelines. Plaintiff seeks a declaratory judgment that the Ordinance is preempted by federal and state law and injunctive relief restraining Defendants from: (i) “enforcing or implementing Ordinance No. 2022-4,” (ii) “enforcing or implementing any other ordinances on the permitting, construction, or development of Summit’s pipeline project,” and (iii) “enforcing or implementing any resolution, ordinance, moratorium, ban, or other regulation that purports or intends to regulate any safety or permitting aspect of Summit’s pipeline project.” [ECF No. 1 at 18].

On January 26, 2023, the Shelby County Planning and Zoning Commission sent letters to local landowners. The letters stated the landowners had recorded an easement conveying certain rights of access to property, but they had not received the appropriate conditional use permit prior to conveyance. The letters explained that “the county may assess penalties against any person who violates the ordinance” and fine them \$750.00 per day. [ECF No. 26-3 at 3]. The notices concluded by stating, “[i]f the easement agreement is not terminated by 02/10/2023 in addition to the penalties described above, the county may seek involuntary termination of the easement agreement by a court.” *Id.*

¹ The Court refers to its Preliminary Injunction Order, ECF No. 51, for other facts relevant to the parties’ cross-motions.

² The complaint was originally filed by Summit and William Couser. The Preliminary Injunction Order dismissed Couser for lack of Article III standing. The action proceeds with Summit as the sole plaintiff.

In response to those letters, Plaintiff requested a preliminary injunction to enjoin enforcement of the Ordinance until a final resolution of this action. On March 31, 2023, the Court held a hearing in this matter. At the end of argument, the Court asked the parties to provide more information. The requested information was subsequently submitted. [ECF Nos. 47; 48].

Prior to the hearing, Defendants filed a counterclaim against Summit for failure to comply with sections 8.31 and 8.32 of the challenged Ordinance. “Under section 8.31 of the Ordinance, Summit was required to submit an application to the County for a conditional use permit by November 18, 2022.” [ECF No. 44 at 2]. Under section 8.32, Summit was prohibited from executing easement agreements with landowners before it obtained a conditional use permit from the County. *Id.* at 2–3. Defendants claimed Summit violated both sections and requested infraction penalties against Summit. Plaintiff resisted.

On July 10, 2023, the Court issued an Order granting Plaintiff’s request for a preliminary injunction. [ECF No. 51]. In that Order, the Court found that the issuance of a preliminary injunction was appropriate due in part because Summit was likely to prevail on its preemption claims. The Court ordered that (i) “Defendants Shelby County, Iowa, the Shelby County Board of Supervisors, and each of the Supervisors in their official capacities are enjoined from enforcement of Shelby County Ordinance No. 2022-4 effective immediately,” (ii) “Defendants shall immediately issue a written notice to all employees in the County who are involved in enforcing Ordinance No. 2022-04 or have oversight of such enforcement and notify them of the injunction prohibiting enforcement of the Ordinance,” and (iii) “Defendants shall demonstrate its compliance with the Order by submitting an affidavit detailing its efforts to the Court within ten (10) days of entry of this Order.” *Id.* at 37.

On August 4, 2023, the parties filed cross-motions for summary judgment. Defendants also filed a supplement briefing to which Plaintiff responded.³ For the reasons discussed in detail below, Plaintiff's Motion is GRANTED and Defendants' Motion is DENIED.

II. SUMMARY JUDGMENT STANDARD

"Summary judgment is proper if the movant 'shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *United States v. Meyer*, 914 F.3d 592, 594 (8th Cir. 2019) (quoting Fed. R. Civ. P. 56(a)). "A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party; a fact is material if its resolution affects the outcome of the case." *Amini v. City of Minneapolis*, 643 F.3d 1068, 1074 (8th Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "If the moving party has met this burden . . . the non-moving party must set forth specific facts showing that there are genuine issues for trial." *Bankston v. Chertoff*, 460 F. Supp. 2d 1074, 1085 (D. N.D. 2006) (citations omitted). To preclude the entry of summary judgment, the nonmovant must make a sufficient showing on every essential element for which it has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). When considering a summary judgment motion, a court must view "evidence in the light most favorable to the non-moving party and draw[] all reasonable inferences from that evidence in favor of the nonmoving party." *Cullor v. Baldwin*, 830 F.3d 830, 836 (8th Cir. 2016) (quoting *Smith v. URS Corp.*, 803 F.3d 964, 968 (8th Cir. 2015)). However, a court must reject an interpretation of events in favor of a party if it is blatantly contradicted by the record. *Wallingford v. Olson*, 592 F.3d 888, 892 (8th Cir. 2010)

³ On that same day, Defendants filed a notice of appeal to the United States Court of Appeals for the Eighth Circuit from this Court's Preliminary Injunction Order. As of the date of this present Order, the appeal remains pending.

(quoting *Scott v. Harris*, 550 U.S. 372, 380 (2010)). Summary judgment is most appropriate when the “issues are primarily legal rather than factual” in nature. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Shirley*, 96 F.3d 1108, 1111 (8th Cir. 1996).

III. ANALYSIS

In the Preliminary Injunction Order, the Court found Summit was likely to prevail on its preemption claims under federal and state law. [ECF No. 51]. For the state preemption claims, Defendants contend on summary judgment that the Court erred in finding the distance and siting requirements, the permitting requirement, and the landowner permitting requirement were conflict preempted. Concerning the claim of preemption under federal law, Defendants argue the Court erred in granting the injunction by finding any provision under the Ordinance was expressly preempted, taking the position that none of the county requirements qualify as “safety standards” within the meaning of the federal statute. [ECF No. 62 at 36–37]. Specifically, they claim the Ordinance’s Hazard Safety Plan “[does] not dictate the contents of the pipeline company’s federally mandated, internal response plan” and merely request “information necessary to allow the County to perform its legal obligations under Iowa Code chapter 29C to engage in emergency response and hazard mitigation planning.” *Id.* at 40–41. Put another way, they appear to argue that the Ordinance’s Hazard Safety Plan is akin to an information sharing requirement, not a safety standard. Defendants also claim that the Ordinance’s abandonment and discontinuation requirements are not federally preempted, arguing that regulations of abandoned or discontinued pipeline facilities fall outside of federal jurisdiction. *Id.* at 42.

The Court disagrees. For reasons fully articulated in its Preliminary Injunction Order, the Court finds the Ordinance is preempted by federal and state law. Notwithstanding Defendants’ assurances that the Ordinance and Iowa Code § 479B are not irreconcilable, the challenged

restrictions impose severe limitations that will lead to a situation where the IUB may grant a permit to construct a pipeline and Summit is unable to do so. This situation is the one that preemption is designed to avoid; so long as the situation exists, the Ordinance is unenforceable under implied preemption. *City of Davenport v. Seymour*, 755 N.W.2d 533, 538 (Iowa 2008).

For the federal law preemption claims, Defendants' argument that the Ordinance's emergency preparedness requirements are merely requests for information, not components dictating safety standards, is unconvincing. As noted in the Preliminary Injunction Order, an application for a conditional use permit by a pipeline company must include extensive information on emergency response and hazard mitigation. If PHMSA regulations exist, pipeline companies must still provide documentation of compliance with those regulations. The companies must also include "a detailed plan describing how the Pipeline Company will work with the County's law enforcement, emergency management personnel, and first responders in the event of a spill, leak, rupture or other emergency or disaster related to the Pipeline." [ECF No. 59-2 at 14]. If no PHMSA regulations exist and the pipeline is a carbon dioxide pipeline, the pipeline companies must "submit a plan that meets the requirements of this section." *Id.* The requirements include a map and description of the proposed route, a description of the health risks, an estimate of the worst-case scenario for a carbon discharge, a list of structures and facilities in a fallout zone, a list of "high consequence areas" where a rupture would be more likely to result in the loss of life, alternative routes through the county designed to minimize risk, and "all information needed by county first responders . . . to engage in local emergency management." *Id.* at 14–15. Lastly, the pipeline companies may need to provide "a Carbon Dioxide Pipeline rupture emergency response training program" and equipment for "response personnel." *Id.* at 15.

As plainly evident, the Ordinance's Hazard Safety Plan imposes restrictions beyond merely information sharing to assist the County with its own emergency preparedness planning. Because the statute provides the Secretary of Transportation with the authority to enact emergency response and hazard mitigation plans, and local governments are preempted from regulating the safety of facilities addressed by federal law, "from regulating in any manner whatsoever with respect to the safety of . . . facilities," the Court reiterates its earlier conclusion that express preemption invalidates the Ordinance's emergency response and hazard mitigation provisions. 49 U.S.C. § 60102(a)(2)(B); *see also ANR Pipeline Co. v. Iowa State Com. Comm'n*, 828 F.2d 465, 470 (8th Cir. 1987) (holding that, in the context of interstate transmission facilities, that local governments are precluded "from regulating in any manner whatsoever with respect to the safety" when Congress has set federal standards).

Defendants' unusual argument that the PSA jurisdiction does not extend to abandoned or discontinued pipeline facilities is equally unconvincing. The statute provides the Secretary with authority to promulgate regulations on construction and maintenance of pipelines. 49 U.S.C. § 60102(a)(2)(B). The regulations require the companies to implement procedures on the abandonment of pipelines. *See* 49 C.F.R. § 195.402(c)(10) (requiring that a pipeline company must have a plan for "[a]bandoning pipeline facilities" that includes "safe disconnection from an operating pipeline system, purging of combustibles, and sealing abandoned facilities . . . to minimize safety and environmental hazards."). They must also provide a report to the Secretary establishing its compliance with the statutory and regulatory provisions. 49 U.S.C. § 60108(b)(6)(A). In light of this, the Court finds that PSA does extend to abandoned and discontinued pipelines. As put forth in the Preliminary Injunction Order, the Ordinance's abandonment requirements are expressly preempted by the PSA.

IV. CONCLUSION

For the reasons above and for reasons more fully articulated in its Preliminary Injunction Order, Plaintiff's Motion for Summary Judgment is **GRANTED** and Defendants' Motion for Summary Judgment is **DENIED**. [ECF Nos. 58; 59].

Under Federal Rule of Civil Procedure 65(d), every order granting an injunction "must . . . state its terms specifically . . . and describe in reasonable detail . . . the act or acts restrained." Fed. R. Civ. P. 65(d)(1)(B-C). The scope of the permanent injunction is defined as follows:

1. **IT IS ORDERED** that Defendants Shelby County, Iowa, the Shelby County Board of Supervisors, and each of the Supervisors in their official capacities are permanently enjoined from enforcement of Shelby County Ordinance No. 2022-4 effective immediately. They may not enforce Arts. 8.3, 8.4., 8.5. 8.6., 8.7., 8.8., 8.9., 8.10., 8.11., or 8.12 of the law in any capacity or through any instrumentality available to them.
2. **IT IS FURTHER ORDERED** that Defendants shall immediately issue a written notice to all employees in the County who are involved in enforcing Ordinance No. 2022-4 or have oversight of such enforcement and notify them of the permanent injunction prohibiting enforcement of the Ordinance.
3. **IT IS FURTHER ORDERED** that Defendants shall demonstrate its compliance with the Order by submitting an affidavit detailing its efforts to the Court within ten (10) days of entry of this Order.

IT IS SO ORDERED.

Dated this 4th day of December, 2023.



STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA**

CIVIL NUMBER:

Plaintiff(s),

v.

JUDGMENT IN A CIVIL CASE

Defendant(s),

JURY VERDICT. This action came before the Court for trial by jury. The issues have been tried and the jury has rendered its verdict.

DECISION BY COURT. This action came before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

Date:

CLERK, U.S. DISTRICT COURT

By:

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION**

SUMMIT CARBON SOLUTIONS, LLC,
Plaintiffs,

v.

SHELBY COUNTY, IOWA; SHELBY
COUNTY BOARD OF SUPERVISORS;
STEVE KENKEL, in his official capacity as a
Shelby County Supervisor; CHARLES
PARKHURST, in his official capacity as
Shelby County Supervisor; DARIN HAAKE,
in his official capacity as Shelby County
Supervisor,

Defendants.

CASE NO. 1:22-cv-00020-SMR-SBJ

NOTICE OF APPEAL

Defendants Shelby County, Iowa, Shelby County Board of Supervisors, Steve Kenkel, Charles Parkhurst, and Darin Haake, pursuant to 28 U.S.C. § 1291 and Federal Rules of Appellate Procedure 3(a)(1) and 4(a)(1), hereby appeal to the United States Court of Appeals for the Eighth Circuit from the final decision of the district court entered on December 4, 2023 (ECF No. 82), and the final judgment entered on December 18, 2023 (ECF No. 84), and all adverse rulings and orders inhering therein.

Respectfully submitted this 23rd day of December, 2023.

/s/ Jason M. Craig _____

Jason M. Craig (AT0001707)

AHLERS & COONEY, P.C.

100 Court Avenue, Suite 600

Des Moines, Iowa 50309-2231

Telephone: (515) 243-7611

Facsimile: (515) 243-2149

Email: jcraig@ahlerslaw.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify on December 23, 2023, I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Southern District of Iowa by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Jason M. Craig _____

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA**

Notice of Appeal Supplement

Case Name: _____ vs. _____

District Court Case Number: _____

Appeal Fee (505.00) Status: Pd _____ IFP _____ Pending _____ Government Appeal _____

Counsel: Appointed _____ CJA _____ Retained _____ Pro Se _____ Pro Bono _____

*Reminder: CJA appointed counsel will need to complete their AUTH 24 form thru CJA eVoucher.

Appeal filed by: Counsel _____ Pro Se _____

Any reason why counsel should not be appointed: _____

Certificate of Appealability: Denied _____ Granted _____ Not Issue _____

Pending post Judgment motions: Yes _____ No _____

If so, type of motion(s) and docket entry number:

High Public Interest Case: Yes _____ No _____

Simultaneous Opinion release Requested: Yes _____ No _____

Trial Held: Bench _____ Jury _____ No _____

Court Reporter: Yes _____ No _____

Reporter's Name: _____

Appealing: Order prior to final judgment _____ or final judgment _____

File this form with the Notice of Appeal